*LW1210 - Labour and Employment Law*

With Paul Tilley

COURSE DESCRIPTION:

This course will examine the ever changing subordinate legislation, statute and common law in Canada that deals with union-management relations and interactions, as well as the relations and interactions between individual (non-unionized) employees and their employers. The course is designed to provide students with a current overview of the Canadian system of labour and employment law. The student will explore employment law; labour law; and statute/subordinate legislation for labour and employment law. Students will have the opportunity to apply and research various employment and labour law legislation and cases.

PREREQUISITES: HN1100 – Industrial Relations

HN1240 – Human Resource Management II

CO-REQUISITES: None

CREDIT VALUE: Four (4)

COURSE HOURS PER WEEK: Four (4)

LAB HOURS PER WEEK: One (1)

SUGGESTED TEXT:

Carter, D.D., England, G., Etherington, B., and Trudeau, G. (2001). Labour law in Canada (5th

ed.). The Hague: Kluwer Law International (Butterworths). ISBN-10: 0433430125 or

9041117504

Or:

Filsinger, K. (2009). Employment law for business and human resources professionals (2nd ed.).

Toronto ON: Emond Montgomery Publications. ISBN-13: 9781552393536

Plus:

Canada Labour Code (R.S., 1985, c. L.-2) Parts I & III

<http://laws.justice.gc.ca/en/showdoc/cs/L-2///en?page=1>

<http://laws.justice.gc.ca/en/L-2>

The Labour Relations Act of Newfoundland and Labrador. RSNL 1990 CHAPTER L-1-

LABOUR RELATIONS ACT. <http://www.assembly.nl.ca/legislation/sr/statutes/l02.htm>

The Labour Standards Act of Newfoundland and Labrador. RSNL1990 CHAPTER L-2 -

LABOUR STANDARDS

ACT. <http://www.assembly.nl.ca/legislation/sr/statutes/l02.htm>

**COURSE OUTCOMES**

**Upon successful completion of the course the student will be able to:**

1. Describe the Canadian system of labour and employment law

2. Discuss labour and employment law and examine how the legislation and case law impacts human resource management practice

3. Interpret key sections of Newfoundland and Labrador Labour Relations Act and Regulations, Newfoundland and Labrador Labour Standards Act and Regulations, and the Canadian Labour Code Parts I and III

4. Research and examine various labour and employment decisions and/or topics

5. Apply various labour and employment practices in compliance with the governing legislation

**MAJOR TOPICS:**

1.0 The Canadian System of Labour and Employment Law

2.0 Employment Law

3.0 Labour Law

4.0 Statute and Subordinate Legislation for Labour and Employment Law

**1.0 The Canadian System of Labour and Employment Law**

1.1 Differentiate between labour and employment law

1.2 Explain the legislative powers of the federal and provincial governments

1.3 Describe the constitutional limits to legislative powers

1.4 Describe the court system in Canada

1.5 Explain how the constitution, including the Charter of Rights and Freedoms, affects labour and employment law

1.5.1 Describe how courts interpret constitutional law

1.5.2 Explain the dialogue between the courts and the legislative branches of the

Canadian government

1.5.3 Explain how precedents affect HR decision making

1.5.4 Review the development of common law

1.6 Explain the creation and empowerment of quasi-judicial bodies that administer labour and employment law

1.7 Describe the various sources of labour and employment law

1.8 Describe the role of government in the formation and administration of labour and

employment law

**2.0 Employment Law**

2.1 Discuss the applicability of common law to the employment relationship

2.1.1 Identify employees to whom common law does not apply© College of the North Atlantic LW1210 Page 4 of 8

2.1.2 Describe those types of employment relationships that have to be given special status under common law and statute law

2.1.2.1 Describe the dependent and independent contractor tests

2.1.3 Explain how the courts determine who is and who is not an employee

2.1.4 Distinguish between contract of service and contract for service

2.1.5 Discuss the legal status of probationary employees

2.1.6 Define minimum standards legislation

2.1.7 Describe the statutory limitations on the employment of minors

2.1.8 Describe the special employment laws dealing with foreign nationals working in Canada

2.2 Define and explain issue estoppel

2.3 Describe employment contracts

2.3.1 Define contract of employment

2.3.2 Describe the requirements of writing in employment contracts

2.3.3 Explain the purpose of employment contracts

2.3.4 Describe the statutory requirement for fairness in employment contracts under human rights codes and acts

2.3.5 Explain negligent hiring

2.3.6 Describe the source/roots of the rights and duties of the parties to employment contracts/relationships

2.3.7 Explain the concept of explicit, implicit and statutory terms of an employment contract

2.3.8 Explain the effect of the sale of a business on an employment contract

2.4 Describe employment equity requirements in Canada

2.5 Explain pay equity

2.5.1 Explain the mechanism of remedy for complaints of pay inequity

2.6 Discuss the duties, and obligations of the employer

2.6.1 Explain the duty of pay remuneration

2.6.1.1 Explain the principle of quantum meruit

2.6.1.2 Explain how quantum meruit is determined when pay is due

2.6.1.3 Describe the effects of illness on pay

2.6.1.4 Describe when illness becomes grounds to terminate the employment contract due to frustration

2.6.2 Describe the forms of remuneration

2.6.2.1 Explain the statutory requirements for remuneration

2.6.2.2 Describe the impact of pay equity statutes

2.6.2.3 Discuss the variation in remuneration across jurisdictions for part time workers

2.6.3 Explain the employer’s duty to provide work

2.6.4 Discuss the employer’s responsibility for employee conduct© College of the North Atlantic LW1210 Page 5 of 8

2.6.4.1 Explain the theory of vicarious liability

2.6.5 Explain the employer’s duty to provide a safe workplace

2.7 Explain the duties and obligations of employees

2.7.1 Explain how the duties and obligations of the employee may be entered into in an employment contract

2.7.2 Explain and discuss the duty of fidelity, the duty to obey, the duty of skill and care, and the fiduciary duty

2.7.3 Discuss restrictive covenants

2.8 Discuss termination of the employment contract

2.8.1 Explain a repudiatory breech

2.8.2 Explain expiry as a specific term

2.8.3 Discuss performance standards

2.8.4 Explain termination due to frustration

2.8.5 Describe the effect of death of a party on the employment contract

2.8.6 Discuss termination through dissolution of a partnership

2.8.7 Explain termination by notice

2.8.7.1 Discuss the purpose of notice as stated by the courts

2.8.7.2 Discuss group termination notice requirements under statute law

2.8.7.3 Discuss the statutory requirements for severance pay

2.8.8 Explain termination for cause

2.8.8.1 List the main elements of just cause

2.8.8.2 Explain the role of progressive discipline in termination for cause

2.8.9 Discuss employer remedies for breach of employment contract

2.8.9.1 Explain summary dismissal

2.8.9.1.1 Describe wrongful resignation and the employer

remedy for wrongful resignation

2.8.9.2 Explain when and how an employer may seek damages

2.8.9.3 Discuss injunction for specific performance

2.8.10 Discuss employee remedy for breach of employment contract

3.0 Labour Law

3.1 Discuss labour union status

3.1.1 Define labour union

3.1.2 Describe the legal status of unions under common law and statute law

3.1.3 Discuss the legal status and democratic rule in trade unions

3.1.4 Explain the legal relationship between local and parent unions

3.1.5 Explain the constitutional right of all persons in Canada to belong to a

trade union and to participate in trade union activities© College of the North Atlantic LW1210 Page 6 of 8

3.1.6 Discuss the right to remain in a trade union

3.1.6.1 Describe the interpretation by the courts of the right to remain in

a trade union

3.1.6.2 Explain the requirement of good faith by the union and the

requirement of due process

3.2 Discuss the duty of a union to provide fair representation

3.2.1 Explain the duty of a union to provide fair representation in negotiation of

collective agreements and in the handling of grievances

3.2.2 Describe the statutory requirement of fair representation

3.2.2.1 Describe what labour boards consider when dealing with a

complaint of failure to provide due and fair representation

3.3 Discuss the right to organize a union

3.3.1 Explain the legal protection of individual employees in organizing unions

3.3.2 Explain the legal protection of unions in organizing the workplace

3.3.3 Describe the employer’s legal rights in limiting access to information

3.3.4 Discuss the reconciliation of the rights of employees, unions and

employers in the administration of statute law

3.3.5 Discuss remedies for violations of the parties’ right to organize

3.3.6 Explain the legal recognition of collective bargaining rights

3.3.6.1 Explain the administrative duties of labour boards

3.3.6.2 Explain the requirements for certification

3.3.6.3 Describe the certification process

3.3.6.4 Describe categories of employees who are typically excluded

from specific unions

3.4 Discuss union bargaining rights

3.4.1 Describe what constitutes a union

3.4.2 Explain the collective bargaining purpose requirement to be considered a

union

3.4.3 Explain legitimate restrictions on memberships in unions

3.4.4 Explain how unions may acquire bargaining agent status

3.4.4.1 Describe the requirement of formality

3.4.4.2 Explain the use of petitions in seeking bargaining agent status

3.4.4.3 Review the legal requirements for certification votes

3.4.4.4 Explain timeliness of an application for certification

3.4.5 Explain how labour boards determine who the employer is

3.4.5.1 Explain the effect of sale or transfer of a business on a

bargaining unit

3.4.5.2 Explain the status of multi-employer bargaining

3.4.6 Discuss termination of bargaining rights of a bargaining agent

3.4.6.1 Describe the transfer of bargaining rights to another bargaining

agent© College of the North Atlantic LW1210 Page 7 of 8

3.4.6.2 Explain decertification and abandonment

3.5 Discuss collective bargaining

3.5.1 Explain the bargaining agent’s exclusive authority to bargain with an

employer

3.5.2 Discuss the prohibition on individual bargaining

3.5.3 Explain union security provisions in collective agreements

3.5.4 Explain statutory freeze

3.5.5 Describe conciliation and mediation requirements at law

3.5.6 Explain strike votes and describe the process of strike notice

3.5.7 Explain the requirements to commence bargaining

3.5.8 Explain the duty to bargain in good faith and the remedies for failure to

bargain in good faith

3.5.9 Explain the duty to meet, the duty to supply information, and the duty to

complete negotiation

3.5.10 Explain circumvention of the bargaining agent

3.5.11 Explain the requirement of full discussion

3.5.12 Discuss untimely economic sanction

3.5.13 Discuss the content of collective agreements at law

3.5.13.1 List compulsory provisions in a collective agreement

3.5.13.2 Explain the duration of the duty to bargain in good faith

4.0 Statute and Subordinate Legislation for Labour and Employment Law

4.1 Discuss and interpret the key provisions / sections of the Labour Standards Act

and Regulations of Newfoundland and Labrador

4.2 Discuss and explain the applicability of the Human Rights Code of Newfoundland

and Labrador

4.3 Describe and interpret key provisions / sections of the Canada Labour Code Parts

I and III and the Labour Relations Act and Regulations of Newfoundland and

Labrador

4.4 Discuss and explain the applicability of the Human Rights Act of Canada